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MUNICIPAL HOME RULE CHARTERS

MARGARET A. SCHAFFNER

MADISON WISCONSIN
December 1908

MUNICIPAL HOME RULE CHARTERS

MARGARET A. SCHAFFNER

COMPARATIVE LEGISLATION BULLETIN—No 18—OCTOBER, 1908
Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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Proposes a definite program of local self-government suited to the cities of Michigan.

SCOPE OF HOME RULE MOVEMENT[1]

The home rule movement in the United States has been advanced 1st, through constitutional provisions; 2nd, through legislative enactments.

The dependence of the municipality upon the will of the legislature has been lessened in a number of states through legislation granting increased power to municipalities over local affairs. But this method of extending municipal power and responsibility nevertheless leaves the source of power in the legislature and what has been granted at one session may be taken away at the next.

The method of securing home rule through constitutional provisions empowering the municipality to frame its own charter, places the local government beyond the interference of the legislature in matters which are purely municipal and thus secures a more permanent basis for local self government.

HISTORY

Constitutional Provisions

Municipal home rule has been secured through con-

[1] The present inquiry is limited to the question of home rule charters secured through constitutional provisions.

stitutional provisions in California, Colorado, Minnesota, Missouri, Oklahoma, Oregon and Washington.

See Cal. Const. 1879, art. 11, sec. 6, as amended in 1896; sec. 8, as amended in 1887, 1890, 1892, 1902 and 1906; and sec. 8¼ amendment of 1896: Col. Const. art. 20, amendment of 1902; Minn. Const. art. 4, sec. 36, amendment of 1896 as amended in 1898: Mo. Const. 1875, art. 9, secs. 16 and 17 and secs. 20–25, as amended in 1902: Okla. Const. 1907, art. 18, sec. 3 (a) and sec. 3 (b): Ore. Const. art. 11, sec. 2, as amended in 1906: and Washington, Const. 1889, art. 11, sec. 10.

Beginning with the first constitutional provisions of Missouri in 1875 the home rule movement gradually extended to California in 1879, Washington in 1889, Minnesota in 1896, Colorado in 1902, Oregon in 1906, Oklahoma in 1907 and at the present time the proposition of municipal home rule is before the people of Michigan in the proposed constitution to be voted upon in November, 1908.

Legislation

Three general classes of legislation have been enacted under the constitutional provisions for home rule: 1st, legislation giving effect to the provisions where not self executing; 2nd, legislation to supplement the home rule system; and 3rd, the ratification of home rule charters where the legislature is given the veto power.

Enabling acts. Legislation to give effect to the home rule provisions is required in Minn. (Const. art. 4, sec. 36) and in Wash. (Const. art. 11, sec. 10).

For enabling acts, see Minn. Laws, 1897, c. 255: Laws, 1899, c. 351: and Wash. Ballinger's Ann. Codes and St. 1897, secs. 734–742.

General laws. The home rule systems of Washington and of Minnesota both reserve the right of the legislature to enact

general laws relating to municipal affairs, and such laws are paramount to the provisions of the local charters.

See State v. Carson, 1893, 6 Wash. 250, and the reservation in the Minn. Const. art. 4, sec. 36.

Legislative veto. In California the proposed charter must be submitted to the legislature for its "approval or rejection as a whole without power of alteration or amendment," but no home rule charter has ever been refused ratification by the legislature. See Cal. Const. art. 11, sec. 8.

CLASSES OF CITIES HAVING HOME RULE PRIVILEGES

The requirements for home rule privileges vary under the several constitutional provisions. Missouri requires a population of more than 100,000; Washington, 20,000; California, 3,500; and Oklahoma, 2,000. Colorado extends the privilege to any city of the 1st and 2nd class. In Minnesota any city, or village which is to become thereby a city, "may frame a charter for its own government." Oregon includes "every city or town," and the proposed constitution for Michigan provides for home rule for "each city and village."

SEPARATION OF STATE AND MUNICIPAL FUNCTIONS

The question of "home rule" involves the separation of "municipal affairs" from "state functions." What is the sphere of the state and what is the sphere of the municipality?

State functions

It has been generally established by judicial decisions that the general laws of the state are supreme in "state matters" and that municipal charter provisions

are superseded by the state law in all matters pertaining to general police administration, the administration of justice, the conduct of elections, the administration of education, the fixing of city boundaries, and the limitation of municipal indebtedness.

For typical decisions compare, State ex rel. v. Police Commissioners of Kansas City, 1904, 184 Mo. 109 (Police); Miner v. Justices Court, 1898, 121 Cal. 264 (Justice); Fragley v. Phelan, 1899, 126 Cal. 383 (Elections); Kennedy v. Miller, 1893, 97 Cal. 429 (Education); State v. Warner, 1892, 4 Wash. 773 (Boundaries); and Beck v. St. Paul, 1902, 87 Minn. 381 (Municipal indebtedness).

Municipal affairs.

Some difference of opinion prevails in the decisions as to what is included under the term "municipal affairs" but the general tendency seems to leave matters of purely local interest to the municipalities.

Missouri and California have gone farther than any of the other states in granting local autonomy, while Minnesota and Washington have left more opportunity for the interference of the legislature.

The general attitude of the courts is well expressed in a recent decision in California which declares that whatever conflict may be found in the opinions of the court as to the precise meaning of the term "municipal affairs" it has always been conceded by all of the justices that the object of the home rule amendment was to secure to the municipality that adopted a charter for its own government, the maintenance of its charter provisions in municipal matters and to deprive the legislature of the power by laws general in form

to interfere in the government and management of the municipality. Ex parte Braun, 1903, 141 Cal. 204.

For similar decisions compare Fragley v. Phelan, 1899, 126 Cal. 383; Graham v. City of Fresno, 1907, 151 Cal. 465; Rothschild v. Bantel (Cal.), 1907, 91 Pac. 803; Dinan v. Superior Court of City and County of San Francisco (Cal.), 1907, 91 Pac. 806; People v. Johnson, 1905, 34 Col. 143; State ex rel. v. District Court of St. Louis County, 1903, 90 Minn. 457; Grant v. Berrisford, 1904, 94 Minn. 45; Peterson v. City of Red Wing, 1907, 101 Minn. 62; Turner v. Snyder, 1907, 101 Minn. 481; Ewing v. Hoblitzelle, 1885, 15 Mo. App. 441; Kansas City ex rel. North Park District v. Scarritt, 1895, 127 Mo. 642; Kansas City v. Marsh Oil Co., 1897, 140 Mo. 458; Acme Dairy Co. v. City of Astoria, 1907 (Ore.), 90 Pac. 153.

LAWS AND JUDICIAL DECISIONS

Foreign countries

A comparison of municipal government in Europe and in the United States brings out some fundamental points of difference. On the continent the two-fold functions of the municipality as an agent of the state and as an organ for local needs are more clearly separated than in the United States; the central control over municipalities is administrative rather than legislative in practice; and the power of local government in local affairs is generally conceded to the municipality except in points expressly prohibited by general law. The continental municipality as distinguished from the municipality under the American system of jurisprudence is not a government of enumerated powers but is subject to specially enumerated restrictions. The separation of local from general governmental functions leaves the municipality a definite sphere for local action in which the central authority refrains from interfering,[2] whereas the

[2] See the French Municipal Code (Law of April 5, 1884), art. 61. "The municipal council regulates by its deliberations the affairs of the commune".

American theory as recently developed, concedes to the municipality only such powers as have been specifically granted, and in the absence of constitutional restrictions the municipality is subject to the will of the legislature.[3]

In recent years England has applied the continental principle of local autonomy in municipal government and has extended central administrative control over matters of general governmental concern.[4]

United States

California. Const. 1879, art. 11, sec. 6, as amend. in 1896. Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of

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[3] The supreme court of Michigan developed the doctrine that back of constitutional provisions lie certain inherent powers of local self-government, that "local self-government is a matter of absolute right and the state cannot take it away," but later decisions in Michigan somewhat modified the earlier position.

Compare the decisions in: People v. Hurlbut, 1871, 24 Mich. 44; People v. Common Council of Detroit, 1873, 28 Mich. 228; Park Commissioners v. the Mayor, etc., 1874, 29 Mich. 343; Allor v. Wayne, 1880, 43 Mich. 76; Robertson v. Baxter, 1885, 57 Mich. 127; Attorney General v. Detroit, 1885, 58 Mich. 213; Wilcox v. Paddock, 1887, 65 Mich. 23; Board of Met. Police v. Board of Auditors, 1888, 68 Mich. 576.

For cases in other states which take a similar position see: People v. Albertson, 1873, 55 N. Y. 50; People v. Lynch, 1875, 51 Cal. 15; People v. Porter, 1882, 90 N. Y. 68; State v. Denney, 1888, 118 Ind. 382; City of Evansville v. State, 1888, 118 Ind. 426; Rathbone v. Wirth, 1896, 150 N. Y. 459; State ex rel. Attorney General v. Moores, 1898, 55 Neb. 480.

[4] See especially the provisions of the Municipal Corporations (Consolidation) Act of 1882.

the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, except in municipal affairs, shall be subject to and controlled by general laws.

Const. 1879, art. 11, sec. 8, as amend. in 1887, 1890, 1892, 1902 and 1906. Any city containing a population of more than 3,500 inhabitants may frame a charter for its own government, consistent with and subject to the constitution, (or, having framed such a charter, may frame a new one), by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy to the mayor thereof, or other chief executive officer of such city, and the other to the recorder of the county. Such proposed charter shall then be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; provided, that in cities containing a population of not more than 10,000 inhabitants, such proposed charter shall be published in one such daily newspaper; and within thirty days after such publication it shall be submitted

to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or, if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter, (whether framed under the provisions of this section of the constitution or not) and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter certified by the mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall after the approval of such charter by the legislature, be made in duplicate and deposited, one in the office of the secretary of state, and the other, after being recorded in said recorder's office shall be deposited in the archives of the city, and thereafter all courts shall take judicial notice of said charter. The charter, so ratified, may be amended at intervals of not less than two years by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof at a general or special election, held at least thirty days after the publication of such proposals for twenty days in a daily

newspaper of general circulation in such city, and ratified by a majority of the electors voting thereon and approved by the legislature as herein provided for the approval of the charter. Whenever 15 per cent of the qualified voters of the city shall petition the legislative authority thereof to submit any proposed amendment or amendments to said charter to the qualified voters thereof for approval, the legislative authority thereof must submit the same. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

Const. (Amend. 1896), art. 11, sec. 8½. It shall be competent, in all charters framed under the authority given by section eight of article eleven of this constitution, to provide, in addition to those provisions allowable by this constitution and by the laws of the state, as follows:

1. For the constitution, regulation, government, and jurisdiction of police courts, and for the manner in which, the times at which, and the terms for which the judges of such courts shall be elected or appointed, and for the compensation of said judges and of their clerks and attachés.

2. For the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, and the number which shall constitute any one of such boards.

3. For the manner in which, the times at which, and

the terms for which the members of the boards of police commissioners shall be elected or appointed; and for the constitution, regulation, compensation, and government of such boards and the municipal police force.

4. For the manner in which, the times at which, and the terms for which the members of all boards of election shall be elected or appointed, and for the constitution, regulation, compensation, and government of such boards, and of their clerks and attachés; and for all expenses incident to the holding of any election.

Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent in any charter framed under said section eight of said article eleven, to provide for the manner in which, the times at which, and the terms for which the several county officers shall be elected or appointed, for their compensation, and for the number of deputies that each shall have, and for the compensation payable to each of such deputies.

The constitutional provisions relating to freeholders' charters were intended to give municipalities the sole right to regulate, control, and govern their internal conduct independent of the general laws; and this internal regulation and control by municipalities comprise those "municipal affairs" spoken of in the constitution. If the charter is silent a general act upon the subject will govern as if it were a charter provision. Fragley v. Phelan, 1899, 126 Cal. 383.

The provisions of freeholders' charters are supreme as to all matters which the constitution authorizes to be provided for therein, and are exempt from any subsequent legislative interference. Graham v. Mayor of Fresno, 1907, 151 Cal. 465.

Also see Rothchild v. Bantel, 1907, 91 Pac. 803; Dinan v. Superior Court of City and County of San Francisco, 1907, 91 Pac. 806, and older cases cited in these decisions, especially Ex parte Braun, 1903, 141 Cal. 204.

Colorado. Const. (Amend. 1902) art. 20, sec. 4. Makes provisions for a charter convention to frame the first home rule charter for the city and county of Denver.

Const. (Amend. 1902) art. 20, sec. 5. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided.

It shall be competent for qualified electors, in number not less than five per cent. of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election, not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten per cent. of the next preceding gubernatorial vote in said city and county, with a request for a special election, to be held not less than thirty days nor more than sixty days from the date of filing the petition; Provided, That any question so submitted at a special election shall not again be submitted at a special election within two years thereafter.

In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by

a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspaper, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by a majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certifiy to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference, upon proper petition therefor, of measures passed by the council to a vote of the quali-

fied electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment, or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state puproses fixed by act of the general assembly, or interfere in any wise with the collection of state taxes.

Const. (Amend. 1902) art. 20, sec. 6. Cities of the first and second class in this state are hereby empowered to propose for submission to a vote of the qualified electors, proposals for charter conventions and to hold the same, and to amend any such charter, with the same force and in the same manner and have the same power, as near as may be, as set out in sections four (4) and five (5) hereof, with full power as to real and personal property and public utilities, works or ways, as set out in section one (1) of this amendment.

The proposed amendment (art. 20,) is not repugnant to sec. 4, of the enabling act (approved March 3, 1875; 18 U. S. Stat. at L. 474) which requires the constitution to be republican in form and is not repugnant to the constitution of the United States. People v Sours, 1903, 31 Col. 369.

See also Parsons v. People, 1904, 32 Col. 221 (especially p. 240)

The authority of the charter convention to legislate under art. 20 of the Const. was limited to matters of purely local and municipal concern. People v Johnson, 1905, 34 Col. 143.

Mills Ann. St., Rev. Supp. 1891–1905, sec. 4502w. Refers to construction of art. 20 of the Const.

Michigan. (Proposed constitution to be submitted to the people in Nov. 1908), art. 8, sec. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; . . .

sec. 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt, and amend its charter, and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.

Minnesota. Const. (Amend. 1896) art. 4, sec. 36, as amended in 1898. Any city or village in this State may frame a charter for its own government as a city consistent with and subject to the laws of this State, as follows: The legislature shall provide, under such restrictions as it deems proper, for a board of fifteen freeholders, who shall be and for the past five years shall have been qualified voters thereof, to be appointed by the district judges of the judicial district in which the city or village is situated, as the legislature may determine, for a term in no event to exceed six years which board shall, within six months after its appointment, return to the chief magistrate of said city or village a draft of said charter, signed

by the members of said board, or a majority thereof. Such charter shall be submitted to the qualified voters of such city or village at the next election thereafter, and if four-sevenths of the qualified voters, voting at such election shall ratify the same it shall, at the end of thirty days thereafter, become the charter of such city or village as a city, and supersede any existing charter and amendments thereof; provided, that in cities having patrol limits now established, such charter shall require a three-fourths majority vote of the qualified voters voting at such election to change the patrol limits now established.

Before any city shall incorporate under this act the legislature shall prescribe by law the general limits within which such charter shall be framed. Duplicate certificates shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of said city or village and authenticated by its corporate seal. One of said certificates shall be deposited in the office of secretary of state, and the other, after being recorded in the office of the register of deeds for the county in which such city or village lies, shall be deposited among the archives of such city or village, and all courts shall take judicial notice thereof. Such charter so deposited may be amended by proposal therefor made by a board of fifteen commissioners aforesaid, published for at least thirty days in three newspapers of general circulation in such city or village, and accepted by three-fifths of the qualified voters of such city or village voting at

the next election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the State of Minnesota. The legislature may prescribe the duties of the commission relative to submitting amendments of charter to the vote of the people and shall provide that upon application of five per cent of the legal voters of any such city or village, by written petition, such commission shall submit to the vote of the people, proposed amendments to such charter set forth in said petition. The board of freeholders above provided for shall be permanent, and all the vacancies by death, disability to perform duties, resignation or removal from the corporate limits, or expiration of term of office shall be filled by appointment in the same manner as the original board was created, and said board shall always contain its full complement of members.

It shall be a feature of all such charters that there shall be provided, among other things, for a mayor or chief magistrate, and a legislative body of either one or two houses; if of two houses, at least one of them shall be elected by general vote of the electors.

In submitting any such charter or amendment thereto to the qualified voters of such city or village, any alternate section or article may be presented for the choice of the voters, and may be voted on separately without prejudice to other articles or sections of the charter or any amendments thereto.

The legislature may provide general laws relating to affairs of cities, the application of which may be

limited to cities of over fifty thousand inhabitants, or to cities of fifty and not less than twenty thousand inhabitants, or to cities of twenty and not less than ten thousand inhabitants, or to cities of ten thousand inhabitants or less, which shall apply equally to all such cities of either class, and which shall be paramount while in force to the provisions relating to the same matter included in the local charter herein provided for. But no local charter, provision or ordinance passed thereunder shall supersede any general law of the State defining or punishing crimes or misdemeanors.

Rev. Laws, 1905, secs. 746–758, and Laws, 1907, c. 17, c. 199, c. 216, c. 373, and c. 375. Provision is made for carrying the constitutional amendment into effect and definite limits are prescribed within which cities may frame their own charters. Limitations are placed on bonded indebtedness, and safeguards are provided in the granting of franchises. Successive four year tenures are prescribed for the charter boards. Otherwise the legislative enactments largely repeat the provisions of the constitutional amendment.

The provisions of Const. art. 4, sec. 36, requiring the legislature to prescribe limits within which cities may frame their own charters, is sufficiently complied with when the legislature prescribes and imposes such general restrictions of the city's powers as are deemed by that body expedient and proper; and it is not necessary that the legislature prescribe a general framework for the city charter. State ex rel. v. O'Connor, 1900, 81 Minn. 79.

The constitutional amendment of 1898 (sec. 36, art. 4) providing for the submission of new charters or amendments to the voters of the localities interested, for ratification, is essentially republican, and is not in violation of art. 4, sec. 4, of the federal constitution. Hopkins v. City of Duluth, 1900, 81 Minn. 189.

The various provisions of a municipal charter, adopted under the constitution authorizing cities to frame their own charters, as to subjects properly belonging to the government of municipalities, have all the force and effect of legislative enactments. State ex rel. Freeman v. Zimmerman, 1902, 86 Minn. 353.

The power and authority conferred by the Constitution upon cities to frame their own charters extends to and embraces any subject appropriate to the orderly conduct of municipal affairs. State ex rel. v. District Court of St. Louis County, 1903, 90 Minn. 457.

The charter of any city incorporated under Const. art. 4, sec. 36, allowing cities to frame their charters and providing that such charter shall be in harmony with the constitution and laws of Minnesota must comply with the public policy of the state, but on any subject appropriate to the orderly conduct of municipal affairs it may differ in detail from those of existing laws. Grant v. Berristord, 1904, 94 Minn. 45.

Followed in Peterson v. City of Red Wing, 1907, 101 Minn. 62.

Unless otherwise expressly provided, the provisions of a "home rule charter", if subject to municipal regulation, supersede the general laws with reference to the same subject-matter. Turner v. Snyder, 1907, 101 Minn. 481.

Missouri. Const. 1875 art. 9, sec. 16. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election; which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board or a majority of them. Within thirty days thereafter, such proposed charter shall be submitted to the qualified voters of such city, at a gen-

eral or special election, and if four-sevenths of such qualified voters voting thereat shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city, and supersede any existing charter and amendments thereof. A duplicate certificate shall be made, setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of the recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter, so adopted, may be amended by a proposal therefor, made by the law-making authorities of such city, published for at least thirty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the state.

The provision of sec. 16, art. 9, that charters may be amended by the acts of the people of the city "and not otherwise" is mandatory. It is binding on all departments of the state government and forbids the regulation and direction of purely municipal affairs by act of the legislature. Kansas City ex rel. North Park District v. Scarritt, 1895, 127 Mo. 642.

The charters and amendments adopted under art. 9, sec. 16, supersede the general statutes where the two conflict as to mere municipal regulations. Kansas City v. Marsh Oil Co., 1897, 140 Mo. 458.

The power conferred by art. 9, sec. 16 is continuing so that a city to which the section applies does not exhaust its constitutional grant after once adopting a charter thereunder. Morrow v. Kansas City, 1905, 186 Mo. 675.

Const. 1875 art. 9, sec. 17. It shall be a feature of all such charters that they shall provide, among other things, for a mayor or chief magistrate, and two houses of legislation, one of which at least shall be elected by general ticket; and in submitting any such charter or amendment thereto to the qualified voters of such city, any alternative section or article may be presented for the choice of the voters, and may be voted on separately, and accepted or rejected separately, without prejudice to other articles or sections of the charter or any amendment thereto.

Const. 1875, art. 9, secs, 20–5, as amended in 1902. Provisions for home rule charter for St. Louis.

sec. 20. The city of St. Louis may extend its limits so as to embrace the parks now without its boundaries, and other convenient and contiguous territory, and frame a charter for the governemnt of the city thus enlarged, upon the following condition, that is to say: The council of the city and county court of the county of St. Louis shall, at the request of the mayor of the city of St. Louis, meet in joint session and order an election, to be held as provided for general elections, by the qualified voters of the city and county, of a board of thirteen freeholders of such city or county, whose duty shall be to propose a scheme for the enlargement and definition of the boundaries of the city, the reorganization of the government of the county,

the adjustment of the relations between the city thus enlarged and the residue of St. Louis county, and the government of the city thus enlarged, by a charter in harmony with and subject to the constitution and laws of Missouri, which shall, among other things, provide for a chief executive and two houses of legislation, one of which shall be elected by general ticket, which scheme and charter shall be signed in duplicate by said board or a majority of them and one of them returned to the mayor of the city and the other to the presiding justice of the county court within ninety days after the election of such board. Within thirty days thereafter the city council and county court shall submit such scheme to the qualified voters of the whole county and such charter to the qualified voters of the city so enlarged, at an election to be held not less than twenty nor more than thirty days after the order therefor; and if a majority of such qualified voters, voting at such election, shall ratify such scheme and charter, then such scheme shall become the organic law of the county and city, and such charter the organic law of the city, and at the end of sixty days thereafter shall take the place of and supersede the charter of St. Louis, and all amendments thereof, and all special laws relating to St. Louis county inconsistent with such scheme.

The constitutional provision (art. 9, sec. 20) that laws passed under the authority of the charter must be in harmony with the constitution and laws of the state is not to be understood as prescribing that there must be an exact coincidence in all possible points of comparison. The meaning is that no regulation established by the charter or made by its authority

shall do violence either to the declared laws or to the policy or manifest governmental purposes of the state, as shown by the constitution and statues. In re Dunn, 1880, 9 Mo. App. 255.

sec. 21. A copy of such scheme and charter, with a certificate thereto appended, signed by the mayor and authenticated by the seal of the city, and also signed by the presiding justice of the county court and authenticated by the seal of the county, setting forth the submission of such scheme and charter to the qualified voters of such county and city, and its ratification by them ,shall be made in duplicate, one of which shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of the recorder of deeds of St. Louis county, shall be deposited among the archives of the city, and thereafter all courts shall take judicial notice thereof.

sec. 22, as amended in 1902. The charter so ratified may be amended by proposals therefor submitted by the lawmaking authorities of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals and accepted by three-fifths of the qualified voters voting for or against each of said amendments so submitted; and the lawmaking authorities of such city may order an election by the qualified voters of the city of a board of thirteen freeholders of such city to prepare a new charter for such city, which said charter shall be in harmony with and subject to the constitution and laws of the state, and shall provide, among other things, for a chief executive and at

least one house of legislation to be elected by a general ticket. Said revised charter shall be submitted to the qualified voters of such city at an election to be held not less than twenty nor more than thirty days after the order therefor, and if a majority of such qualified voters voting at such election ratify such charter, then said charter shall become the organic law of such city, and sixty days thereafter shall take effect and supersede the charter of such city and all special laws inconsistent therewith.

sec. 23. Such charter and amendments shall always be in harmony with and subject to the constitution and laws of Missouri, except only that provision may be made for the graduation of the rate of taxation for city purposes in the portions of the city which are added thereto by the proposed enlargement of its boundaries. In the adjustment of the relations between city and county, the city shall take upon itself the entire park tax; and in consideration of the city becoming the proprietor of all the county buildings and property within its enlarged limits, it shall assume the whole of the existing county debt, and thereafter the city and county of St. Louis shall be independent of each other. The city shall be exempted from all county taxation. The judges of the county court shall be elected by the qualified voters outside of the city. The city, as enlarged shall be entitled to the same representation in the general assembly, collect the state revenue and perform all other functions in relation to the state, in the same manner, as if it were a county

as in this constitution defined; and the residue of the county shall remain a legal county of the state of Missouri, under the name of the county of St. Louis. Until the next apportionment for senators and representatives in the general assembly, the city shall have six senators and fifteen representatives, and the county one senator and two representatives, the same being the number of senators and representatives to which the county of St. Louis, as now organized is entitled under sections eight and eleven of article 4 of this constitution.

Secs. 20–25 of art. 9, of the Constitution conferred on the city of St. Louis the power to regulate its own affairs without interference from the state legislature except in cases expressly intrusted to the legislature by some constitutional exception. Ewing v. Hoblitzelle, 1885, 15 Mo. App. 441.

Oklahoma. Const. 1907, art. 18, sec. 3 (a). Any city containing a population of more than 2,000 inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state, by causing a board of freeholders, composed of two from each ward, who shall be qualified electors of said city, to be elected by the qualified electors of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board or a majority of them, and returned, one copy of said charter, to the chief executive officer of said city, and the other to the register of deeds of the county in which said city shall

be situated. Such proposed charter shall then be published in one or more newspapers published and of general circulation within said city, for at least twenty-one days, if in a daily paper, or in three consecutive issues, if in a weekly paper, and the first publication shall be made within twenty days after the completion of the charter; and within thirty days, and not earlier than twenty days after such publication, it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the governor for his approval, and the governor shall approve the same if it shall not be in conflict with the constitution and laws of this state. Upon such approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it. A copy of such charter, certified by the chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them shall, after the approval of such charter by the governor, be made in duplicate and deposited, one in the office of the secretary of state and the other, after being recorded in the office of said register of deeds, shall be deposited in the archives of the city; and thereafter all courts shall take judicial notice of said charter. The charter so ratified may be amended by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof

(or by petition as hereinafter provided) at a general or special eleciton, and ratified by a majority of the qualified electors voting thereon, and approved by the governor as herein provided for the approval of the charter.

sec. 3 (b). An election of such board of freeholders may be called at any time by the legislative authority of any such city and such election sha'l be called by the chief executive officer of any such city within 10 days after there shall have been filed with him a petition demanding the same, signed by a number of qualified electors residing within such city, equal to 25 per-centum of the total number of votes cast at the next preceding general municipal e'ection; and such election shall be held not later than 30 days after the call therefor. At such election a vote shall be taken upon the question of whether or not further proceedings toward adopting a charter shall be had in pursuance to the call, and unless a majority of the qualified electors voting thereon shall vote to proceed further, no further proceedings shall be had, and all proceedings up to that time shall be of no effect.

Oregon. Const. art. 11, sec. 2, as amended in 1906. Corporations may be formed under general laws, but shall not be created by the legislative assembly by special laws. The legislative assembly shall not enact, amend, or repeal any charter or act of corporation for any municipality, city, or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the

constitution and criminal laws of the state of Oregon. (Proposed by initiative petition and adopted, June 4, 1906.)

Const. art. 11, sec. 2, as amended June 4, 1906, expressly deprives the legislative assembly of all authority to enact, amend or repeal any charter of a city or town the legal voters of which have reserved to themselves the exercise of such power, except the right of appeal. Acme Dairy Co. v. City of Astoria, 1907, 90 Pac. (Ore.) 153.

Const. art. 11, sec. 2, as amended June 4, 1906, prohibits the legislature from amending the charter of cities and towns, the right of which is reserved to the voters thereof, and art. 4, as amended June 4, 1906, by section 1a, provides that the referendum may be demanded by the people, which power is reserved to the legal voters of every municipality and district, as to all local, special, and municipal legislation of every kind in and for their respective municipalities and districts: that the manner of excercising such power shall be prescribed by the general laws, except that the cities and towns may provide for the manner of exercising such powers as to their municipal legislation. Held, that the initiative and referendum power so conferred on municipalities was not limited to the enacting or repealing of ordinances but extended to the amendment of the charter. Acme Dairy Co. v. City of Astoria, 1907, 90 Pac. (Ore.) 153.

Washington. Const. 1889, art. 11, sec. 10. . . . Any city containing a population of twenty thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the constitution and laws of this state, and or such purpose the legislative authority of such city may cause an election to be had, at which election there shall be chosen by the qualified electors of said city, fifteen freeholders thereof who shall have been residents of said city for a period of at least two years preceding their election and qualified voters, whose duty it sha l be to convene within ten days after their election and prepare and propose a charter for such city. Such proposed charter shall be submitted to the

qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it sha.l become the charter of said city, and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in two daily newspapers published in said city, for at least thirty days prior to the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given for at least ten days before the day of election, in all election districts of said city. Said elections may be general or special elections, and except as herein provided, shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election after notice of said submission, published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

General laws cannot be affected by the adoption of a municipal freeholders' charter but are binding upon the corporation. State v. Carson, 1893, 6 Wash. 250.

The right of a city of the first class to make a new charter is included within the constitutional grant of power to frame

a charter and the mode pointed out in art. 11, sec. 10, of the constitution for submitting proposed amendments to a vote of the people should not be construed as exclusive of every other method. Reeves v. Anderson, 1895, 13 Wash. 17.

Ballinger's Ann. Codes and St. 1897, secs. 734–742. Enumerates the powers of cities having 20,000 population or more and makes provision in detail for the organization and government of such cities under the home rule provisions of the constitution. (Laws, 1890, p. 131, sec. 23 and p. 215, secs. 1–9.)

sec. 763–768. Upon petition of ¼ of the qualified electors, the city council is required to provide for the election of freeholders to propose changes in the charter. (Laws, 1895, c. 27.)

Laws, 1903, c. 186. On petition of 15% of the qualified voters of any municipality, having adopted a charter under the laws of the state, requesting the adoption of a specified charter amendment providing for any matter within the realm of local affairs or municipal business, the amendment must be submitted to the voters and if approved by a majority of the electors voting upon the proposition the amendment is to become a part of the charter law.

This provision is not to be construed as depriving city councils from submitting proposed charter amendments to the voters as now provided but is to be held as affording a concurrent and additional method for proposing and submitting amendments.

Under Acts, 1903, c. 186, requiring submission to the voters of an amendment of a city charter on petition of a certain proportion of the qualified voters of the city it lies with the city council in the first instance to pass on the question of the qualification of the signers. Hindman v. Boyd, 1906, 84 Pac. (Wash.) 609.

PROCEDURE IN CHARTER-MAKING

The procedure required by the different constitutional provisions in the drafting of home rule charters is very similar in the different states.

Initiation of charter-making

The power to initiate proceedings for framing a charter is most generally placed with the law-making authorities of the municipality but this is not uniformly the rule. In Minnesota the district court is authorized to take the initiative. Quite generally provision is made for initiating proceedings upon petition of a specified percentage of the qualified electors.

Initiative by district court. The Minnesota provision is the only one which authorizes the judiciary to take the initiative in the framing of freeholders' charters.

See Minn. Const. art. 4, sec. 36.

Initiative by law making authority. In a number of the states the legislative authority of the city may call an election for a charter board at its discretion.

See Cal. Const. art. 11, sec. 8: Mo. Const. art. 9, sec. 16; Okla. Const. art. 18, sec. (3) and Wash. Const. art. 11, sec. 10.

Initiative by electors. In certain states an election for a charter convention must be called upon petition of a specified percentage of the qualified voters. In Colorado the number of signatures required is 5% and in Oklahoma and in Washington each 25%.

See Col. Const. art. 20, sec. 5: Okla. Const. art. 18, sec. 3 (b) and Wash. Laws, 1895, c. 27.

In Minnesota the board of freeholders in charter commission must be assembled upon petition of 5% of the legal voters.

Selection of charter board

Election by people. Provision is generally made for the election of the charter board by the qualified electors of the municipality.

Compare the provisions of Cal. Const. art. 11, sec. 8: Col. Const. art. 20, sec. 5: Mo. Const. art. 9, sec. 16, and sec. 20: Okla. Const. art. 8, sec. 3 (a): and Wash. Const. art. 11, sec. 10.

Appointment by judiciary. Minnesota is an exception to the general rule and provides that the board be appointed by the district court of the judicial district in which the city or village is situated.

See Minn. Const., art. 4, sec. 36.

Constitution of board

Number of members. The charter board is composed of 13 members in Missouri, 15 members each in California, Minnesota and Washington, and 21 members in Colorado. Oklahoma provides for the election of 2 freeholders from each ward of the municipality.

Tenure of office. In all of the states except Minnesota the term of office expires after the charter has been framed. In Minnesota the board is permanent but the term of office is limited to 4 years.

See Minn Const. art. 4, sec. 36 and Laws, 1899, c. 351.

Ratification of charter

The proposed charter must be submitted to a referendum vote of the qualified electors in each of the states.

Ratification by electors. In Colorado and in Washington a majority of the qualified electors voting on the proposition for the charter is sufficient for ratification. In Missouri and in Minnesota a majority of 4/7 of the electors voting at the election is necessary and Minnesota requires a majority of ¾ for changing patrol limits.

Legislative veto. California requires a majority of the qualified electors "voting thereon" and a subsequent submission of the charter to the legislature for its approval or rejection as a whole without power of alteration or amendment.

Approval of governor. Oklahoma provides that a charter ratified by the people must be submitted to the governor of the state and he is required to approve the same if it is not in conflict with the laws of the state.

Charter amendments

In most of the states the procedure for securing a charter amendment is similar to the method of secur-

ing a complete charter but a wider use of the initiative through petition is generally authorized in the case of amendments. The submission of charter amendments is required upon petition of 15% of the qualified voters in California, 5% in Colorado and Minnesota and 25% in Oklahoma. Washington provides 2 alternative methods for amendments: upon petition of 25% of the qualified electors the city council must provide for the election of freeholders to propose changes in the charter, or if 15% of the qualified voters request the submission of a specified charter amendment it must be submitted.

Compare the provisions of Cal. Const. art. 11, sec. 8; Col. Const. art. 20, sec. 5; Minn. Const. art. 4, sec. 36; Okla. Const. art. 18, sec. 3 (b); Wash. Laws, 1895, c. 27 and Laws, 1903 c. 186.

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